IN THE HIGH COURT OF DELHI

CM(M) No.306/2007

Smt Manjula Verma & Anr. ..... Petitioners
! through: Mr. Dev Anand Bhardwaj, Advocate

VERSUS

$ Kumari Sarla Verma. ..... Respondent
^ through : Mr. Shesh Datt Sharma, Advocate

RESERVED ON: 20.11.2007

% DATE OF DECISION: *3*.12.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

1. The present petition under Article 227 of the Constitution of India is directed against the order dated 29.11.06 passed by the Additional District Judge, Delhi whereby the application under Order VII Rule 11 of the Code of Civil Procedure filed by the petitioners seeking rejection of plaint filed by the respondent was dismissed.

2. Respondent is the plaintiff and the petitioners are the defendants in the original suit. I shall be referring to the parties by their nomenclature in the suit.

3. Brief facts relevant for deciding the controversy in the

present petition are that Late Sh Vijay Kumar Sharma (hereinafter referred to as the deceased) joined Custom, Excise and Gold (Control) Appellate Tribunal, West Block 2, R.K. Puram, New Delhi in the year 1977 as an Inspector. At the time of the joining the deceased nominated his mother and unmarried sister i.e. the plaintiff as his nominees for the purposes of Provident Fund Act, 1925 and General Provident Fund (Central Services) Rules 1960. It is to be noted that the deceased was a bachelor at the time he joined service.

4. Deceased got married to defendant no.1 as per Hindu rites and ceremonies on 28.2.1987. A minor son i.e. defendant no.2 was born out of the said wedlock.

5. Unfortunately the deceased met with an untimely death on the intervening night of 2/3.06.02. At the time of his death the deceased was working as a Superintendent. The mother of the deceased had pre-deceased him.

6. After the death of the deceased the plaintiff approached the employer of the deceased seeking release of retirement benefits of the deceased in her favour. To overcome a nomination dated 06.07.1991 in favour of the defendants it was contended by the plaintiff that the defendant no.1 who was also working with the same employer manipulated the service record of the employer and prepared a forged nomination dated 06.07.91 in her own favour and in favour of defendant no.2.

7. It is not in dispute that the retirement benefits of the

deceased consist of sum standing to the credit of the deceased in the Provident Fund Account of the deceased.

8. Considering the dispute between the parties the employer of the deceased expressed its inability to release the amount standing to the credit of the deceased in the Provident Fund Account.

9. Thereafter the plaintiff approached the Central Administrative Tribunal, New Delhi seeking release of the amount standing to the credit of Provident Fund Account of the deceased. Central Administrative Tribunal directed the plaintiff to approach an appropriate forum for the said relief.

10. Plaintiff filed the instant suit seeking declaration and consequential reliefs against the defendants. Declaration sought was that the original nomination made by the deceased in favour of the plaintiff is valid and subsisting and that the plaintiff is entitled to receive the amount standing to the credit of the deceased in the Provident Fund Account of the deceased. It was also prayed that the nomination dated 06.07.91 purportedly made by the deceased in favour of defendants be cancelled as being null and void.

11. Apart from the allegations that the nomination dated 06.06.91 made by the deceased in favour of the defendants is forged the other allegations in the plaint are that the relationship between the deceased and defendant no.1 was strained; that the deceased intended to divorce defendant no.1 and that the death of the deceased was a result of criminal conspiracy entered into

between the defendant no.1 and her friends.

12. Defendants resisted the suit and filed a written statement. In said written statement defendants categorically denied the averments made in the plaint.

13. The defendants filed an application seeking rejection of the plaint. Rejection was sought on the ground that the suit does not disclose any cause of action for the reason nomination does not confer beneficial interest upon the nominee but only a right to receive the amount standing to the credit of the Provident Fund Account of the deceased subscriber and that nominee who receives such amount holds the same for the benefit of the estate of the deceased subscriber and the amount continues to be estate of the deceased and therefore has to be disbursed to the legal heirs of the deceased subscriber as per personal law applicable. In support whereof reliance was placed upon two decisions of the Supreme Court reported as *Sarbati Devi & Anr v Smt. Usha Devi* AIR 1984 SC 346 and *Vishin N. Khanchandani v Vidya Lachmandas Khanchandani & Anr* AIR 2000 SC 2747.

14. It was pleaded that admittedly the deceased died intestate and the defendants were the only class I heirs.

15. Holding that the decisions in *Sarbati* and *Vishin*'s cases (supra) pertain to the Insurance Act, 1983 and Government Saving Certificate Act, 1959 respectively and that provisions of said enactments are quite different from the provisions of the Provident Funds Act, 1925, vide order dated 29.11.06 the learned Trial Court

dismissed the application under Order VII Rule 11 of the CPC filed by the defendants.

16. In the instant petition the petitioners reiterate the stand taken by them in their application under Order VII Rule 11 of the Code of Civil Procedure.

17. Per contra, respondent/plaintiff has raised two contentions arising out of the language of Sections 5(1) and 2(c) read with 3(2) and 4(1)(a) of the Provident Funds Act, 1925. The contentions are:-

I. That the expression "*to the exclusion of all other persons*" occurring in Section 5(1) of the Provident Funds Act, 1925 means that the amount standing to the credit of Provident Fund Account of the deceased subscriber becomes the absolute and exclusive property of the nominee and that the legal heirs of the deceased subscriber have no right or interest in the said amount. In support whereof, reliance has been placed upon the following judicial decisions:-

a) *Piare Lal & Ors v Ganpat & Anr* AIR 1930 Lahore 437(2).

b) *Koruprolu Talupulu v Dasetti Narasamma* AIR 1967 AP 10.

c) *M. Malati & Ors v M. Dharma* AIR 1968 Ori 8.

d) *Ugra Sen Singh v Ganpat & Anr.* 1995 All LJ 788.

II. That the plaintiff is a 'dependent' within the meaning of Section 2(c) of the Provident Funds Act, 1925, and that when the nominee is a dependent, by virtue of the operation of Section 3(2) read with Section 4(1)(a) and Section 5(1) of the Provident Funds

Act, 1925, the amount standing to the credit of the Provident Funds Account of the deceased subscriber vests in the nominee and thus becomes the property of the nominee. In support whereof, reliance has been placed upon the following 2 judicial decisions:-

a) *Kadiam Kusuma & Ors v Kadiam Appachiamma & Anr* (1985) ILLJ 194 AP.

b) *Mridul Sengupta & Anr v Shipra Sengupta & Anr* 2002 (2) CCC 172 (MP).

18. To appreciate the first contention raised by the respondent/plaintiff it is important to note the legislative history of Section 5 of the Provident Funds Act, 1925.

19. Section 5 of the Provident Funds Act, 1925 as originally enacted read as under:-

> "**5**. **Rights of nominees** (1) Subject to the provisions of this Act, but otherwise notwithstanding anything contained in any law for the time being in force or any disposition, whether testamentary or otherwise, by a subscriber to, or depositor in a Government or Railway Provident Fund of the sum standing to his credit in the Fund, or of any, part thereof, any nomination, duly made in accordance with the rules of the Fund, which purports to confer upon any person the right to receive the whole or any part of such sum on the death of the subscriber or depositor, shall be deemed to confer such right **absolutely** until such nomination is varied by another nomination made in like manner or is expressly cancelled by the subscriber or depositor by notice given in such manner and to such authority as is prescribed by those rules.

20. There was a conflict of judicial opinion whether a nomination made by a person is only in nature of an authority to the nominee to receive the provident fund or in the nature of a

testamentary disposition.

21. Noting the expression '*deem to confer such right absolutely until such nomination is varied*' occurring in Section 5(1) of the Provident Funds Act, 1925 as also non-obstante clause therein following decisions took a view that a nominee acquires an absolute right to enjoy the fund:-

a) *Non Singh v Mothi Bai* AIR 1936 Mad 477.

b) *Sitarama Swamy v Venkatarama Rao* AIR 1944 Mad 370(1).

c) *Somayajulu v Somi Devi* AIR 1950 Mad 210.

d) *Nayagam v Krishnaswni* AIR 1944 Mad 370.

e) *Dharma Rao v Venkata Mahalakshmamma* AIR 1947 Mad 96.

f) *Maung Bakin v Ma Pwa Thin* AIR 1929 MP 79.

g) *Mohammad Naim v Munimunnissa* AIR 1936 Oudh 32.

h) *Mabel Head v Miss Kathleen Guest & Anr* AIR 1945 Bom 43.

i) *Anmad Abdul Razzak & Ors v Jamala Bint Mehdi* AIR 1935 Bom 234.

22. On the other hand the expressions '*notwithstanding anything contained in any law for the time being in force or any disposition, whether testamentary or otherwise*' and '*confers such absolutely*' occurring in Section 5(1) of the Provident Fund Act, 1925 were construed by some High Courts as not conferring beneficial interest upon the nominee but only a right to receive the provident

fund amount and the nominee who receives the amount would hold for the benefit of estate of the deceased subscriber. It was held that the fund continues to be the estate of the deceased. According to this view, the non-obstante clause noted above is intended to take away the impediment in the personal law of the parties to nominate a person to receive the provident amount as a legatee if the nomination was treated as a testamentary disposition, but no beneficial interest is vested in the nominee except a bare right to receive the provident fund exclusively and the said amount continues to be the estate of the deceased subscriber. That the word '*absolutely*' was held as not conferring on the nominee a title to the exclusive ownership of the provident fund amount. The decisions which took aforesaid view are as under:-

a) *Noor Mahomed v Sardar Khatun* AIR 1949 Sindh 38.

b) *Mt. Amna Khatoon v Abdul Karim* AIR 1947 All 562.

c) *Hardial Devi Ditta v Janki Das* AIR 1928 Lahore 773.

d) *Janki Das v Asha Bi* AIR 1957 MP 79.

23. In the year 1946, Section 5(1) of the Provident Fund Act, 1925 was amended to read as under:-

> "**5. Rights of nominees-** (1) Notwithstanding anything contained in any law for the time being in force or in any disposition, whether testamentary or otherwise, by a subscriber to, or depositor in, a Government or Railway Provident Fund of the sum standing to his credit in the Fund or any part thereof, where any nomination, duly made in accordance with the rules of the Fund, purports to confer upon any person the right to receive the whole or any part of such sum on the death of the subscriber or depositor occuring before the sum has become payable, has been

paid, the said person shall, on the death as aforesaid of the subscriber or depositor, become entitled, to the exclusion of all other persons, to receive such sum or part thereof, as the case may be, unless -

(a) such nomination is at any time varied by another nomination made in like manner or expressly cancelled by notice given in the manner and to the authority prescribed by those rules, or

(b) such nomination at any time becomes invalid by reason of the happening of some contigency specified therein.

And if said person predeceases the suscriber or depositor, the nomination shall, so far as it relates to the right conferred upon the said person, become void and of no effect:

Provided where provision has been duly made in the nomination in accordance with the Rules of the Fund, conferring upon some other person such right instead of the person deceased, such right shall, upon the deceased as aforesaid of the said person, pass to such other person."

24. The following two important changes were introduced in the new Section:-

a) The word '*absolutely*' occurring in the old section was omitted.

b) If the nominee predeceased the subscriber the right conferred upon the nominee became void and of no effect.

25. Considering the afore-noted two material changes, in the decision reported as *Shaik Dawood v Mahmooda Begum* AIR 1985 AP 321 the Division Bench of the Andhra Pradesh High Court observed as under:-

"13. Prior to the amendment of 1946, section of 5 of the Provident Funds Act, 1925, in its material terms, and dealing with a case of nomination provided : "Any nomination which purports to confer upon any person

the right to receive the whole or any part of such sum on the death of the subscriber ... shall be deemed to confer such right absolutely" There was a conflict of judicial opinion whether the nominee who has the excluded right to receive payment takes the amount to enjoyed by him absolutely or only receives the amount, subject to the rights of the legal heirs of the deceased subscriber. By the amendment of 1946, the word "absolutely" occurring hitherto in section 5 was omitted. After the amendment of 1946, section 5 of the Provident Funds Act, 1925, read in its material terms "where any nomination purports to confer upon any person the right to receive the whole or any part of such sum on the death of the subscriber occurring before the sum has become payable or before the sum, having become payable, has been paid, the said person other shall on the death of the subscriber become entitled, to the exclusion of all other persons, to receive such sum" The amendment, in our view, sought to put an end to the conflict of judicial opinion and to favour the view that the nominee has, after the amendment, only the right to receive the amount which had become payable, without any legislative expression, that such nominee has any right as such to enjoy the money merely on the basis of such nomination.

17. Section 3 of the Act merely provides for protection of compulsory deposits both during the lifetime of subscriber or after the death, when the fund vests in the dependent. Section 4 of the Act provides for repayments and section 5 provides for the rights of nominees. These various provisions have to be read together and with the other provisions of Provident Funds Act. The Act makes provision in the interest of certain large clause of employees of a scheme of compulsory, and to a limited extent voluntary, thrift. Its intention is that such people in case of their retirements have something to live on, and in case of death, have some thing to leave. In the majority of cases, accumulated balance in the provident fund represents the life savings of the employees. Provision for a making nomination is made to facilitate quick repayment so that the nominee gives a nation is made to facilitate quick repayment so that the nominee gives a valid acquittance for the amount paid to him as such nominee. Section 5 of the Act, therefore, provided that the nominee shall become entitled, to the exclusion of all other persons, to receive such sum. The Act had only provided for the exclusive right of the nominee receive and did not provide that the same shall become

> the absolute property of the nominee. Prior to the 1946 amendment, the word "absolutely" occurring in section 5 contributed to the divergence of opinions. After the 1946 amendment, the view expressed by the Madras High Court and shared by other High Courts has become obsolete. Malati's case, (AIR 1968 Orissa 8)(supra) in our view, does not lay down the correct legal position. We dissent from that view.
>
> 22. To sum up, out conclusions are :
>
> (1) The nominee of a provident fund has only the exclusive right to receive the fund. His rights are the same as that of a nominee under the section 39 of the Insurance Act.
>
> (2) The provident fund remains the property of the deceased subscriber and is available for distribution amongst his heirs in accordance with their personal law. The Supreme Court decisions decision in Sarbati Devi's case [1984] 55 Com Cas 214, governs nominations made in respect of provident funds as well.
>
> (3) Tulupulu's case, AIR 1967 AP 10 and Lalitha's case [1975] 2 APLJ 168, do not sate the law correctly."

26. Turning to the decisions relied upon by the respondent, *Piare Lal*'s case (supra) was decided with reference to Section 5(1) as it existed prior to the Amendment incorporated in the year 1946.

27. The decision in *Koruprolu Talupulu*'s case (supra) has merely followed the decision rendered by the Calcullta High Court in *In the Goods of Stanley Austin Cardigan Martin* AIR 1939 Cal 642 without any discussion. Like *Piare Lal*'s case (supra), *Stanley*'s case also pertains to Section 5(1) as it existed prior to the Amendment incorporated in the year 1946.

28. In *M. Malati*'s case (supra) the Division Bench of the Orissa High Court merely adopted the view expressed by the

Madras High Court, in the decisions rendered on the basis of the wording used in section 5 prior to the amending Act of 1946. Section 5 of the Act, as amended, was no doubt extracted but there is no discussion as to the effect of the amendment on the divergent opinions expressed by different High Courts on the pre-amended Section 5.

29. Reliance upon the *Ugra Sen*'s case is wholly misplaced for the reason the said decision hold that the nominee has the right to receive the provident fund amount on the death of the subscriber.

30. The Division Bench of the Andhra Pradesh High Court in *Shaik Dawood*'s case (supra) has noted the amendment incorporated and has discussed the affect thereof. I concur with the said view.

31. Pertaining to the second contention raised by the respondent, Sections 3(2) and 4(1)(a) of the Provident Funds Act, 1925 need to be noted.

32. Section 3(2)(a) of the Provident Funds Act, 1925 reads as under:-

> "**3. Protection of compulsory deposit**- (1).....
>
> (2) Any sum standing to the credit of any subscriber to, or depositor In any such Fund at the time of his decease and payable under the rules of the Fund to any dependant of the subscriber or depositor, or to such person as may be authorized by law to receive the payment on his behalf, shall subject to any deduction authorized by this Act and, save where the dependant is the widow or child of the subscriber or depositor,

subject also to the rights of an assignee under an assignment made before the commencement of the Act, **vest** in the dependant, and shall, subject as aforesaid, be free from any debt or other liability incurred by the deceased or incurred by the dependant before the death of the subscriber or depositor."

33. Section 4(1)(a) of the Provident Funds Act, 1925 reads as under:-

> "**4. Provisions regarding repayment** (1) When under the rules of any Government or Railway Provident Fund the sum standing to the credit of any subscriber or depositor, or the balance thereof after the making of any deduction authorized by this Act has become payable, the officer whose duty it is to make the payment shall pay the sum, or balance as the case may be. to the subscriber or depositor, or, if he is dead, shall--
>
> (a) if the sum or balance, or any part thereof, **vests** in a dependant or under the provisions of Section 3, pay the same to the dependant to such person as may be authorized by law to receive the payment on his behalf....."

34. In the two decisions relied upon by the respondent i.e. *Kadiam Kusuma* and *Mridul Sengupta*'s cases (supra) a view was taken that the provident fund amount becomes the absolute property of a nominee when the nominee is also a 'dependent' within the meaning of Section 2(c) of the Provident Funds Act, 1925. Gist of the reasoning was that the word 'vest' occurring in Sections 3(2) and 4(1)(a) of the Provident Fund Act, 1925 was used in the wider sense indicating that it intended to confer rights of ownership on the nominee-dependent as against mere right to obtain possession of the fund on behalf of true owners. It was held that the statute statutorily vested the beneficial interest in the nominee-dependant. Reasoning could be culled out from the following

observations of the Andhra Pradesh High Court in *Kusuma*'s case (supra):-

> "8. A reading of these two provisions along with S. 5(1) would show that the fund would vest in the nominee when the nominee is a dependent and the fund is payable absolutely to the exclusion of others. S. 2(c) merely defines who is the dependent and does not purport to confer any right upon the dependent. S. 3(2) provides that if under the rules the fund is payable to the dependent then it vests in him and shall be free from any debt or other liability incurred by the deceased-subscriber S. 4(i) contains instructions for payment. Thus we see when the nominee is a dependent by virtue of the operation of S. 3(2) read with S. 4(1)(a) and S. 5(1) of the Act, the fund vests in the nominee and is payable absolutely to the nominee to the exclusion of others. It is difficult to hold that the said vesting is for a limited purpose of receiving the amount but not carrying the beneficial interest with it. When a special provision is made under S. 3(2) vesting the fund in the nominee-dependent and the rules provide for payment to such nominee we must give effect to that provision irrespective of the effect of the nomination in general under S. 5(1)."

35. The question which needs to be answered is; what is the true meaning and import of the word '*vest*' occurring in Sections 3(2) and 4(1)(a) of the Provident Funds Act, 1925.

36. This question was considered in the decisions reported as *Aimai v Awabai Dhanjishaw Jamsetji & Ors* 1924 Sind 57 and *Noor Mahomed v Sardar Khatun* AIR 1949 Sind 38.

37. In *Aimai*'s case, one Dhanjishaw Master was a widower with one daughter Aimai. Afterwards he married one Awabai. He died leaving behind his second wife and several children. He died intestate. He had nominated his daughter Aimai to receive the provident fund amount. The widow Awabai claimed that the

provident fund belonged to the estate of the deceased and that she was entitled to recover it from Aimai. Though the controversy in the case revolved around the Provident Funds Act, 1897 but provisions similar to Sections 3 and 4 of the Provident Funds Act, 1925 existed. In the appeal, the Court posed the following question:-

> “Did he, in any way, divest himself of it during his life-time or by an instrument to come into effect after his death? And, secondly: is there any provision of the law which prescribes a special method of devolution or distribution in the case of Provident Fund amounts? It is axiomatic that no person or body can, at his will introduce any peculiar rule of inheritance or distribution.”

38. Proceeding to answer the question posed, it was held:-

> "To take the second point first, that is, let us assume that the amount at the credit of Master in the fund, or at any rate the right to recover that amount from the fund, formed part of the estate of Master during his life-time. Has he done anything to divest himself of his right thereto? All he did was to direct that in case of his death the sum should be paid to Aimai. This is in itself a mere mandate the validity of which expires with the death of the mandator. It is true the validity is extended by Statute beyond such death but such statutory extension does not by itself produce any change in the nature of the mandate. The question as to what the recipient is to do with the fund when she has obtained it is still for decision. The nomination paper is not a Will. In no case could a Parsi execute a Will in that form. But even in the case of those persons who can make a valid informal Will the nomination paper could not be considered as a Will and nothing more; if it were so considered the whole object of the nomination would be frustrated. The object of the nomination system is to designate some person to whom the Provident Fund may pay over the amount due to the subscriber, and obtain a valid quittance. If the nominee were merely the legatee under the nomination paper considered as a Will then in so much as a Will can be revoked by a later Will even if not communicated to the fund or by some former instrument of revocation or in some cases by marriage of the testator the fund could never be certain whether the person nominated was the person entitled to receive payment, that is, if the nominee is to be

regarded as legatee only. True it is that the fund is made safe in respect of the payment made to the nominee, but I am not now considering that, I am merely ascertaining what the legal effect on Master's rights to this fund was by his executing this nomination, paper, and it is certain that the nomination paper cannot operate as a Will."

39. The Court further held:-

"I should hesitate, unless the words of the Statute and of the rules framed thereunder were explicit, to suppose that the perpetration of such unnatural injustice was rendered obligatory on a subscriber to a Provident Fund. Nor can I conceive why the Provident Fund should wish to introduce so strange a law of inheritance. I do not find in the Statutes anything which renders it obligatory for me to take this view. The object of Section 4, as amended by Act IV of 1903, is to render the fund incapable of attachment in the hands of the nominee for debts due by the subscriber. It is true that the Legislature uses the word "vest" but that word does not necessarily connote title. A person, in whom the property of another vests, has the same rights of dominion over the property as the owner would have had, no more and no less. But no one has the right to deal with his property so as to defeat the legal claims of others."

40. The effect of nomination was again considered by the Sind High Court in *Noor Mohamed*'s case (supra).

41. One Moulabus son of Mato, an employee of the North Western Railway, died in 1940, leaving property which included a sum of Rs. 5,000/- standing to his credit in the Railway Fund. He was survived by two widows (plaintiff and defendant 1), two daughters (defendants 2 and 3), a mother (defendant 4), and two sisters (defendants 5 and 6) as his heirs. The appellant, who was defendant 7 in the suit was the son of Moulabux's sister. He was the only near male relation of Moulabux, and Moulabux had nominated

him as his nominee to receive the Provident Fund. After the death of Moulabux, the appellant claimed the sum as his property, while the heirs of Moulabux claimed that they were entitled to it under the Mohammedan Law. As a consequence of the dispute the suit was filed by Mt. Sardarkhatun, one of the widow, for partition of the properties left by Moulabux, including the sum of Rs.5,000/-in the Provident Fund Account. One of the relief sought was an injunction against the appellant, restraining him from recovering the Rs. 5,000/- from the Railway. Issue No. 2 framed in the suit was whether the amount of Rs. 5,000/- mentioned in schedule C filed with the plaint forms part of the property of the deceased. It was contended by the appellant who was the nominee that the the sum in the Provident Fund had not only to be paid to him, but became his property on the death of Moulabux by reason of the nomination, and that the heirs of Moulabux were, therefore, not entitled to it.

42. While dismissing the appeal, the Court observed as under:-

> “In every case the right conferred by the Act upon the nominee, whether the nominee be a dependant or not, is the 'right to receive' the amount deposited in the Provident Fund by the subscriber, nothing more and nothing less, although it is enacted that the nomination shall be deemed to confer such right absolutely, notwithstanding anything contained in any law or any disposition made by the subscriber.”

43. Pertaining to the word '*vesting*' the Court observed as under:-

> "vesting in relation to property means the acquisition of the legal right of immediate possession and dominion

> over property. It means nothing more. The words 'the sum shall vest in the nominee' do not connote anything more than that in law the legal right to immediate possession of and dominion over the property shall pass from the trustees of the fund to the nominee, and do not mean that the full rights of ownership's, including the right to the beneficial enjoyment of the property, shall pass to the nominee. The nominee becomes entitled to possession of the sum with out having to obtain letters of administration or a succession certificate. A property may vest in one person, and the beneficial right of enjoying the property as an owner may at the same time vest in another person. The effect of the provident fund vesting in the nominee, when the nominee is a dependant, is therefore quire clear. It confers on the nominee the immediate right to possession and dominion over the amount, without in any manner affecting the beneficial rights of the actual owners, whoever they may be, either as "heirs or legatees".

44. From the afore-noted two decisions, the legal principle which emerges is that the nominee does not acquire any beneficial interest or ownership to the sum in the Provident Fund Account. The nominee merely gets a right to receive the fund. The Division Bench of the Andhra Pradesh High Court in *Shaik Dawood*'s case (supra) has taken a similar view.

45. Before concluding it is also relevant to note a clarificatory circular issued by the Comptroller and Auditor-General of India, New Delhi and addressed to all Accountants-General. It is circular No.1324-T ADMN. II/128-68, dated 24-7-1970. It clarifies as under:-

> “It has been held that Section 5 of the Provident Funds Act, 1925, confers on the nominee merely a right to receive the Provident Fund assets in the event of the subscriber's death and that the nominee does not have an absolute right of disposal of such assets. It is always open to the heirs under the personal law

> applicable to the deceased subscriber to claim their share of Provident Fund money. As such, the orders communicated in this Office Letter, dated 19-9-1969, will apply to all cases where a Court of Law orders payment of Provident Fund money otherwise than in accordance with the nomination irrespective of the fact whether the nomination is held valid or not."

46. In the light of above discussion, I hold that the nomination under the Provident Funds Act, 1925 read with General Provident Fund (Central Service) Rules 1960 only indicates the hand which is authorised to receive the provident fund amount on the payment of which the employer gets a valid discharge of its liability under the Provident Funds Act, 1925.

47. Turning to the facts of the instant case, even if renomination dated 06.07.91 is proved to be forged and original nomination is declared to be valid it would be of no consequence for the reason ultimately the plaintiff would have to remit the provident fund amount in favour of the defendants/petitioners.

48. The suit thus claims a relief which would have no effect in law. The litigation would result in no fruits accruing to the plaintiff. The relief prayed for by the plaintiff has no consequences in law.

49. The rules of prudence and logic require that the suits seeking meaningless reliefs should be nipped at the bud itself. To achieve this end a Court can exercise inherent powers conferred upon it under Section 151 of the Code.

50. To the similar effect are the following observations of the Supreme Court in the decision reported as *Shipping Corporation*

of India Ltd v Machado Brothers & Ors AIR 2004 SC 2093:-

> "31. For the reasons stated above, we are of the opinion that continuation of a suit which has become infructuous by disappearance of the cause of action would amount to an abuse of the process of the court and interest of justice requires such suit should be disposed of as having become infructuous. The application under Section 151 of CPC in this regard is maintainable.'

51. In view of above discussion, the petition is allowed. The suit filed by the respondent is dismissed, holding the same to be meaningless and of no legal use.

52. No costs.

December 3, 2007 **PRADEEP NANDRAJOG, J.**
sl